

IN THE MATTER OF:	)	
	)	
Delta Shipyard Superfund Site	)	CERCLA Docket No. _____
	)	
Chromalloy American, LLC, Mr. Lynn	)	
Dean and Dean Services West, L.L.C,	)	
	)	
Respondents	)	
	)	
Proceeding under Section 106(a)	)	<b>UNILATERAL ADMINISTRATIVE</b>
of the Comprehensive Environmental	)	<b>ORDER FOR REMEDIAL</b>
Response, Compensation, and Liability	)	<b>INVESTIGATION/FEASIBILITY</b>
Act, 42 U.S.C. § 9606(a).	)	<b>STUDY</b>
	)	
	)	

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority was further redelegated by the Regional Administrator of EPA Region 6 to the Director of the Superfund Division by EPA Region 6 Delegation No. R6-14-14B (Administrative Actions through Unilateral Orders).

2. This Order pertains to property located generally at 200 Industrial Boulevard in the City of Houma, Terrebonne Parish, Louisiana (the “Delta Shipyard Superfund Site” or the “Site”). The Site is located approximately ½ mile on the east and west sides of Dean Court south of Industrial Boulevard. This Order requires Respondents to prepare and perform a remedial investigation/feasibility study (RI/FS) to: (a) determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site; and (b) identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, in order to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Louisiana (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondents and their heirs, successors, and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents’ responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. No Respondent shall interfere in any way with performance of the Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

6. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondent with respect to the Site or the Work, and shall condition all contracts entered into under this Order upon performance of the Work in conformity with the terms of this Order. Respondents or their

contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

### **III. DEFINITIONS**

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the RI/FS, including, but not limited to, the following properties generally located at 200 Industrial Boulevard in the City of Houma, Terrebonne Parish, Louisiana.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Order; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Louisiana Department of Environmental Quality” shall mean the and any successor departments or agencies of the State.]“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order, all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including Dean Services West, LLC. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondents.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondents” shall mean Chromalloy American, LLC, Mr. Lynn Dean and Dean Services West, LLC.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondents’ performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing any deliverable submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the Delta Shipyard Superfund Site, encompassing approximately but not limited to three open pits and an adjacent drainage ditch, located generally at 200 Industrial Boulevard and 200 Dean Court in Houma, Terrebonne Parish,,and depicted generally on the map attached as Appendix B. The Site is situated south of Industrial Boulevard approximately one-half mile on the east and west side of Dean Court.

“State” shall mean the State of Louisiana.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to develop the RI/FS for the Site, as set forth in Appendix B to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean: (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Respondents are required to perform under this Order, except those required by Section XVI (Record Retention).

#### **IV. FINDINGS OF FACT**

8. The former Delta Shipyard Site is located generally at 200 Industrial Boulevard and more specifically at 200 Dean Court in southeastern Houma, Terrebonne Parish, Louisiana. A residential property is located just west of the Site. The Site is bordered to the north by Elevating Boats LLC, to the east by Company Canal waterway, to the south by an industrial crane company (F&M Marco, Inc. and to the west by Bayou LaCarpe. The Company Canal flows south approximately 1,000 feet into Bayou LaCarpe which flows south approximately 4,000 feet into the Houma Navigation Canal. Wetlands located on the Site are contaminated with arsenic, antimony, anthracene, barium, cadmium, ethylbenzene, fluorine, lead, manganese, mercury, 2-methylnaphthalene, phenanthrene, pyrene, o-xylene and m, p-xylene . In addition, three evaporation pits containing greater than 30,000 cubic yards of hazardous material are located in a wetland and may potentially release waste to nearby waterways.

9. Large volumes of waste remain on-site and hazardous substances have been found in groundwater surface water and soil. The closest residential property is located approximately 400 feet west of the open pits. Without remediation of the Site, additional release to groundwater, surface water and soil will continue to occur.

10. The predominate threat to human populations, animals or food chain is the potential for exposure by direct contact with arsenic, antimony, anthracene, barium, benzene, cadmium, chromium, ethylbenzene, fluorine, lead, manganese, mercury, 2-methylnaphthalene, naphthalene, phenanthrene, pyrene, o-xylene to the surface water pathway, groundwater and soil.

11. The Delta Shipyard Superfund Site was listed on the National Priority List (“NPL”) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 22, 2014, 79 Fed. Reg. 56515 (September 22, 2014).

12. Chromalloy American, LLC was the former owner of the Site at the time of disposal of hazardous substances. Delta Iron Works purchased the Site in 1964 and operated the Site as Delta Shipyard and/or Delta Mud. In 1972, Delta Iron Works merged into Chromalloy American Corporation. Chromalloy American Corporation sold the Site to Delta Services Incorporated on August 31, 1980. Chromalloy American Corporation merged into Chromalloy American LLC on December 23, 1986. Chromalloy American LLC is a limited liability company and a responsible party under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) as the former owner of the Site at the time of disposal of hazardous substances

13. Mr. Lynn Dean is an individual that owned the Site from March 31, 1989 to October 29, 2012. Mr. Dean acquired the Site March 31, 1989 from Dean Boats, Inc. Dean Boats, Inc. had acquired the Site out of Bankruptcy on April 8, 1986. Dean Boats, Inc. had their charter revoked November 17, 1998. Mr. Lynn Dean is an individual and a responsible party under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) as the former owner of a hazardous waste site.

14. Dean Services West, L.L.C. is the current owner of the Site. An Act of Exchange occurred October 29, 2012 transferring ownership of the Site from Mr. Lynn Dean to Dean Service West, L.L.C. Dean Services West L.L.C. is a limited liability company and a responsible party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) as the owner of a hazardous waste Site.

15. Multiple phases of investigations have occurred at the Delta Shipyard Site since the early 1980s. Several investigations that have been conducted in the vicinity of the open pits encompassing the current Site. In 1981, EPA contractors performed a primary assessment of the Site and found that contamination of surface water could occur if the pits overflowed, and they found some staining of soil from oily wastes in the pits. In 1983, the Louisiana Department of Natural Resources performed an inspection of the Site and subsequently issued a Notice of Violation. Eight violations were cited; among these violations were “that there was no indication that the facility was having their waste treated stored or disposed of at a permitted hazardous waste facility, and the facility has not developed an adhered to groundwater sampling and analysis plan”.

16. In 1985, Wink Engineering collected once composite sludge sample from each of the three pits. A report by Wink Engineering indicated that the contents of the pits were exposed. The samples were analyzed for volatiles, cyanide, total phenol, flash point, pH, toxicity and oil and grease. Concentrations of chlorobenzene, ethylbenzene, toluene, and total xylenes were detected in the samples collected from the open pits. Wink Engineering concluded in the

report that the Site did not pose a threat to human health or the environment since the constituents did not exceed limited specified in the Wink Engineering report. The nature of the specific limits was not defined in the Wink report (i.e., calculated background values, health-based screening levels, etc.).

17. In 1994, EPA contractors conducted sampling at the pits in support of a Site Inspection Prioritization Report. A limited number of pit sludge and drainage ditch. The sludge samples were collected in and around the pits. During field activities, water was observed flowing from an overflow pipe from Pit 2 into the nearby drainage ditch. The sludge samples collected from the exposed pits indicated the presence of volatiles, semi-volatile organics, pesticides and metals.

18. In 1996, EPA contractor conducted an Expanded Site Inspection of Delta Shipyard. As part of the ESI, seven pit sludge samples, six surface and subsurface soil samples, two groundwater samples, four surface water samples, thirty-seven stream sediment samples and six field Quality Control samples were collected. The pit sludge sample results indicated elevated concentrations of -methylnaphthalene, naphthalene, phenanthrene ethylbenzene, toluene, xylenes, chromium, lead and zinc. Of these, the highest concentrations were the PAHs. In addition, samples collected from groundwater, surface water and soil indicated an elevated presence of PAHs, indicating migration of these contaminants from the pits to the surrounding media.

19. In 2012, EPA's contractors conducted a removal assessment of the Site. A total of 102 waste and soil characterization samples were collected and submitted for analyses by EPA. EPA analyzed the samples for Target Analyte List ("TAL") metals, including mercury, Target Compound List VOCs, TCL semi-volatile organic compounds ("SVOC"), pesticides, and polychlorinated bi-phenyls. A review of the waste source sample results indicates that TAL metals, PCBs, PAHs and TCL VOCs exceeded EPA Site Specific Action Levels-EPA industrial Regional Screening Levels ("RSLs"). Specifically, the TAL metals including arsenic (up to 63.5 milligrams per kilogram) and lead (up to 1,170 mg/kg). PAH including naphthalene (up to 188 mg/kg), and TCL VOCs including ethylbenzene (up to 6.48 mg/kg). A review of the waste disposal characterization samples indicates that the waste is non-hazardous. Specifically, the TCLP results indicated that the material contained within Pits 1,2 and 3 does not contain a toxicity characteristic of a hazardous waste per Table of 40 CFR Section 261.24. Based on TCLP sample analysis, the associated Site waste was determined to be non-hazardous. A review of the soil characterization results indicates that TAL metals, PAHs, and TCL VOCs exceeded EPA Site-Specific Action Levels-EPA Industrial RSLs. Specifically, the TAL metals including arsenic (up to 63.9 mg/kg) and lead (up to 2,170 mg/kg). PAHs including benzo(a)anthracene (up to 2.8 mg/kg), benzo(a)pyrene (up to 1.9 mg/kg) and ethylbenzene (up to 12 mg/kg).

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

20. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. The Delta Shipyard Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).



b. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

- (1) Respondents Dean Services West, L.L.C. is the “owner(s)” and/or “operator(s)” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- (2) Respondents Chromalloy American, LLC and Mr. Lynn Dean were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. The contamination arsenic, antimony, anthracene, barium, benzene, cadmium, ethylbenzene, fluorine, lead, manganese, mercury 2-methylnaphthalene, phenanthrene, pyrene, o-xylene and m,p-xylene found at the Site, as identified in the Findings of Fact above, includes “hazardous substance[s]” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

e. The conditions described in Paragraphs 8-21 of the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

- (1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances; this factor is present at the Site due to the existence of contaminated sediments and recreational fishing in surface waters adjacent to the Site;
- (2) high levels of hazardous substances in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of soils adjacent to the pits that have been contaminated by overflows from the pits and that have the potential to enter adjacent surface waters and wetlands;
- (3) weather conditions that may cause hazardous substances to migrate or be released; this factor is present at the Site due to the existence of material containing contaminants are in direct contact with surface water pathways and contaminants in the pits are exposed to

the elements which can result in release to surface water and adjacent wetlands through: and;

- (4) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because the State of Louisiana requested EPA address the site.

g. The conditions at the Site may constitute an imminent and substantial endangerment to public health or welfare or the environment.

h. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

## **VI. ORDER**

21. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondents are hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

## **VII. OPPORTUNITY TO CONFER**

22. Within (5) days after this Order is signed by the Regional Administrator or his/her delegatee, Respondents may, in writing, request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order.

23. Respondents may appear in person or by an attorney or other representative at the conference. Any such conference shall be held at least (5) days prior to the Effective Date. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than (5) days after the conference, or within (10) days after this Order is signed if a conference is not requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Amy Salinas, Assistant Regional Counsel (6RC-S)  
United States Environmental Protection Agency Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202  
214-665-8063  
Salinas.amy@epa.gov

## **VIII. EFFECTIVE DATE**

24. This Order shall be effective (5) days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or written materials

submitted in accordance with Section VII (Opportunity to Confer). If a conference is requested or written materials are submitted, this Order shall be effective on the later of the 10<sup>th</sup> day after the conference, or the 10<sup>th</sup> day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondents, within the 10- day period, that EPA intends to modify the Order. The modified Order shall be effective (3) days after it is signed by the Regional Administrator or his/her delegatee.

## **IX. NOTICE OF INTENT TO COMPLY**

25. On or before the Effective Date, each Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 23. Each Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense(s) asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any Respondent's assertions. Failure of any Respondent to provide such written notice within this time period shall, as of the Effective Date, be treated as a violation of this Order by such Respondent.

## **X. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS**

26. **Selection of Contractors, Personnel.** All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 20 days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

27. Within 10 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and

shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 26 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 15 days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

28. EPA has designated Mr. Brian Mueller of the EPA Region 6 Superfund Division, as its Remedial Project Manager ("RPM") **or**. EPA will notify Respondents of a change of its designated RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the EPA RPM in accordance with Paragraph 38.a.

29. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Order, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Order shall not be cause for stoppage or delay of Work.

## **XI. WORK TO BE PERFORMED**

30. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

31. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Order, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at <https://semspub.epa.gov/src/document/11/128301>, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at <http://semspub.epa.gov/src/document/11/156756>, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the

treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

32. All written documents prepared by Respondents pursuant to this Order shall be submitted by Respondents in accordance with Section XII (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section XII (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally approved, or modified deliverables.

33. Upon receipt of the draft Feasibility Study Report (“FS Report”), EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the cost, implementability, and long-term effectiveness of any proposed ICs for that alternative.

**34. Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA’s Project Coordinator within 15 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA’s Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct

the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

### **35. Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

**36. Meetings.** Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

**37. Progress Reports.** In addition to the deliverables set forth in this Order, Respondents shall submit written monthly progress reports to EPA by the 20th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Order;

- b. include all results of sampling and tests and all other data received by Respondents;
- c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and
- d. describe all problems encountered in complying with the requirements of this Order and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## **XII. SUBMISSION AND APPROVAL OF DELIVERABLES**

### **38. Submission of Deliverables**

#### **a. General Requirements for Deliverables**

- (1) Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to EPA's RPM at Mr. Brian Mueller (6SF-RL), US EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202 or by electronic mail at Mueller.brian@epa.gov. Respondents shall submit all deliverables required by this Order, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.
- (2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 38.b. All other deliverables shall be submitted in the electronic form specified by EPA'S RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches. Respondents shall also provide paper copies of such exhibits.

#### **b. Technical Specifications for Deliverables**

- (1) Sampling and monitoring data should be submitted in standard regional Microsoft Access format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the Microsoft Access format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data

Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

- (3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

### 39. **Approval of Deliverables**

#### a. **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under this Order or the attached SOW, EPA shall:  
(i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 39.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 39.a(1), Respondents shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 39.a (Initial Submissions) or Paragraph 39.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Order; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-



deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XX (Enforcement/Work Takeover) for violations of this Order.

40. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

41. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

42. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order.

43. For all remaining deliverables not listed in Paragraph 42, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the Work.

44. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 39.a (Initial Submissions) or 39.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Order for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XX (Enforcement/Work Takeover).

45. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

### **XIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

46. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003, March 2001 (reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3," EPA/505/B-04/900A-900C (March 2005).

47. **Laboratories**

a. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (<http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf>) and "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www.epa.gov/ttnamti1/airtox.html>).

b. Upon approval by EPA, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the approved QAPP.

#### 48. Sampling

a. Upon request, Respondents shall provide split or duplicate samples to EPA or its authorized representatives. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples it takes as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA, in the next monthly progress report as described in Paragraph 37 (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Order.

#### **XIV. PROPERTY REQUIREMENTS**

49. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondents and by EPA, providing that such Non-Respondent Owner, and Owner Respondent shall, with respect to Owner Respondent's Affected Property]: (i) provide EPA, and the other Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in Paragraph 49.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will [pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA [or the State];
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 70 (Work Takeover);

- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XV (Access to Information);
- (9) Assessing Respondents' compliance with the Order;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

50. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 60 days after the Effective Date, Respondents are unable to accomplish what is required through "best efforts," they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. EPA reserves the right to seek payment from Respondents for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

#### 51. **Notice to Successors-in-Title**

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA determined that an RI/FS must be performed at the Site; and (iii) that EPA has issued an order to potentially responsible parties requiring implementation of such RI/FS; and (3) identify this Order and the date this Order was issued by EPA. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer Owner Respondent's Affected Property, or 60 days prior to Transferring Owner Respondent's Affected Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA has determined that an RI/FS must be performed at the Site, and that EPA has issued an order to potentially responsible parties requiring implementation of such RI/FS, and identifying this Order and the date it was issued by EPA; and

- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

52. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including their obligation to secure access and ensure compliance with any land, water or other resource use restrictions regarding the Affected Property.

53. Notwithstanding any provision of this Order, EPA retains all of its their access authorities and rights, as well as all of its [their] rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XV. ACCESS TO INFORMATION**

54. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Respondents’ possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **55. Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 55.b, and except as provided in Paragraph 55.b.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA or a court determines that such Record is privileged or protected.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

56. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA under this Section or Section XVI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

57. Notwithstanding any provision of this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XVI. RECORD RETENTION**

58. During the pendency of this Order and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

59. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 55 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

60. Within 30 days after the Effective Date, each Respondent shall submit a written certification to EPA's RPM that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. Any

Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

## **XVII. COMPLIANCE WITH OTHER LAWS**

61. Nothing in this Order limit Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

62. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XVIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

63. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (866)-372-7745 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

64. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's Project Coordinator, or, in the event of his/her unavailability, the Regional Duty Officer at (866) 372-7745 and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

65. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## **XIX. PAYMENT OF RESPONSE COSTS**

66. Upon EPA's written demand, Respondents shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondents a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a SCORPIOS Report, which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

67. Respondents shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number 06GC and the EPA docket number for this action.

68. At the time of payment, Respondents shall send notice that payment has been made to Chief, Enforcement Assessment Section, 6SF-TE, 1445 Ross Avenue, Dallas, Texas 75202, and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 06GC and the EPA docket number for this action.

69. In the event that the payments for Response Costs are not made within 30 days after Respondents' receipt of a written demand requiring payment, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under



this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraphs 67 and 68.

## **XX. ENFORCEMENT/WORK TAKEOVER**

70. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to \$53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. In addition, nothing in this Order shall limit EPA's authority under Section XXIV (Financial Assurance).] Respondents may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

## **XXI. RESERVATIONS OF RIGHTS BY EPA**

71. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not paid by Respondents.

## **XXII. OTHER CLAIMS**

72. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

73. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

74. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

75. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XXIII. INSURANCE**

76. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Delta Shipyard Superfund Site, Houma, Terrebonne Parish, Louisiana and the EPA docket number for this action.

### **XXIV. FINANCIAL ASSURANCE**

77. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of **\$2,500,000** ("Estimated Cost of the Work"). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Division Director, Superfund Division advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondents' obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the

Treasury, guaranteeing payment or performance in accordance with Paragraph 83 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 83 (Access to Financial Assurance);

d. A demonstration by a Respondent that it meets the relevant financial test criteria of Paragraph 80; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 80.

78. **Standby Trust.** If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 77.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 83 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 79. Until the standby trust fund is funded pursuant to Paragraph 83 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

79. Within 30 days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 77 for EPA’s review. Within 60 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondents’ financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Section Chief, Enforcement Assessment Section, Technical & Enforcement Branch, Superfund Division, 6SF-TE, 1445 Ross Avenue, Dallas, Texas 75202.

80. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 77.d or 77.e must, within 30 days:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

81. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 77.d or 77.e must also:

a. Annually resubmit the documents described in Paragraph 80.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 80.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

82. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondents shall follow the procedures of Paragraph 84 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

### **83. Access to Financial Assurance**

a. If EPA determines that Respondents (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

**84. Modification of Amount, Form, or Terms of Financial Assurance.**

Respondents may submit, on any anniversary of the Effective Date or following Respondents' request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 79, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 77 and 78 (Standby Trust). EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount or change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 79 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

**85. Release, Cancellation, or Discontinuation of Financial Assurance.**

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

## **XXV. MODIFICATION**

86. The EPA RPM may make modify any plan or schedule [or the SOW] in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 5 days, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by signature of the EPA Region 6 Superfund Division Director.

87. If Respondents seek permission to deviate from any approved Work Plan or schedule or the SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from the EPA Project Coordinator pursuant to Paragraph 86.

88. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding any deliverables submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

## **XXVI. DELAY IN PERFORMANCE**

89. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondents first knew or should have known that a

delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

90. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of Paragraph 89 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

## **XXVII. NOTICE OF COMPLETION OF WORK**

91. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including but not limited to, payment of Response Costs and Record Retention EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies within 30 days after receipt of the EPA notice. The modified RI/FS Work Plan shall include a schedule for correcting such deficiencies. Within 15 days after receipt of written approval of the modified RI/FS Work Plan, Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Order.

## **XXVIII. ADMINISTRATIVE RECORD**

92. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 9:00am and 5:00pm at the EPA offices in 1445 Ross Avenue, Dallas, Texas 75202. To review the administrative record, please contact Anna Copeland, Enforcement Officer, at 214-665-8144, [copeland.anntasia@epa.gov](mailto:copeland.anntasia@epa.gov) to make an appointment.

93. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

## XXIX. SEVERABILITY

94. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Name

Regional Administrator (or designee/delegatee)

Region (Number)

U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_



## Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
<b>INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT</b>	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. <b>Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document.</b> Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
<b>INSERTING A NEW PARAGRAPH</b>	Click at the end of the ¶ immediately preceding the place where you wish to add the new <b>paragraph</b> , and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
<b>ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE</b>	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
<b>UPDATING THE CROSS-REFERENCES</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
<b>UPDATING THE TABLE OF CONTENTS</b>	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
<b>INSERTING A NEW SECTION HEADING</b>	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
<b>CHANGING THE FONT</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.